

alleging a violation of Plaintiff's constitutional rights against Defendant United States and Defendant Federal Bureau of Prisons, as well as Defendants Bradley, Swindell, Weidlich, and Krepps, in their official capacities;


- 2) Defendants' Motion to Dismiss is GRANTED with prejudice as to the Federal Tort Claims Act ("FTCA") claims against Defendants Bradley, Swindell, Weidlich, and Krepps;³
- 3) Defendants' Motion to Dismiss is GRANTED without prejudice as to the *Bivens* claims against Defendants Bradley, Swindell, Weidlich, and Krepps, in their individual capacities, and Plaintiff is given leave to amend as provided herein;
- 4) Defendants' Motion to Dismiss is DENIED as to the FTCA claims against Defendant United States. The Report and Recommendation recommended that Defendant United States be given an opportunity to file a written notice of intention to enter judgment pursuant to Rule 1042.6 as to the FTCA claim, and Plaintiff be given thirty ("30") days from the filing of said notice to comply with the Certificate of Merit ("COM") rule or offer a legitimate reason why the COM is not needed. On April 16, 2020, Defendant filed such notice at ECF 28. Accordingly, consistent with Magistrate Judge Lenihan's recommendation, Plaintiff must file a response to the notice filed at ECF 28 or offer a legitimate reason why the COM is not needed on or before **May 18, 2020** to avoid these claims being dismissed with prejudice;

constitutional violation by a federal agent have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right.'" *Hartman v. Moore*, 547 U.S. 250, 254 n.2 (2006)(quoting *Carlson v. Green*, 446 U.S. 14, 18 (1980)). A *Bivens* action is the federal equivalent of a suit brought against state officials under Section 1983. *Id.* (citing *Wilson v. Layne*, 526 U.S. 603, 609 (1999)) (other citation omitted); see also *Brown v. Philip Morris, Inc.*, 250 F.3d 789, 800 (3d Cir. 2001).

³ The rulings at Nos. 1 and 2 are "with prejudice" as these claims are without basis in the law and the flaws in these claims cannot be corrected by amendment.

- 5) Defendants' Motion to Dismiss is GRANTED without prejudice as to the claims against the John and Jane Doe Defendants, and Plaintiff is given leave to amend as provided herein.

If Plaintiff wishes to file an amended pleading as described in the Report and Recommendation (ECF 27), his deadline for doing so is **June 10, 2020**. Should Plaintiff file an amended pleading, he must do so consistent with rulings in this Memorandum Order; if Plaintiff does not timely file an amended pleading by such date, the claims dismissed without prejudice under this Order shall convert to dismissal with prejudice without further Order or notice. The Magistrate Judge's Report and Recommendation (ECF 27) is adopted as the Opinion of the District Court.


Stephanie L. Haines
United States District Judge